

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

KURTIS E. ARMANN,  
Petitioner

v. CIVIL ACTION NO. 04-118 ERIE

WARDEN, FCI MCKEAN  
Respondent

STATUS CONFERENCE

Proceedings held before the HONORABLE  
SEAN J. McLAUGHLIN, U.S. District Judge,  
in Judge's Chambers, U.S. Courthouse, Erie,  
Pennsylvania, on Friday, June 2, 2006.

APPEARANCES:

THOMAS W. PATTON, Assistant Federal Public  
Defender, (via Phone), appearing on behalf of  
the Petitioner.

CHRISTY WIEGAND, Assistant United States  
Attorney, (via Phone), appearing on behalf of  
the Respondent.

Ronald J. Bench, RMR - Official Court Reporter

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1 PROCEEDINGS

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3 (Whereupon, the proceedings began at 9:15 a.m., on  
4 Friday, June 2, 2006.)

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6 THE COURT: All right, counsel, I wanted to take a  
7 few minutes and chat with you about the state of the record in  
8 United States v. Armann.

9 Just by way of brief background, as I reviewed the  
10 file, it appeared to me that there were documents that were  
11 referenced in the file that I had, but I didn't have the actual  
12 documents. Which we subsequently requested from the United  
13 States to see if they could find and locate various documents,

14 and they forwarded those documents to me. Those would include  
15 the brief in support of petition for new trial, filed by  
16 counsel for Mr. Armann, in the United States Court of Appeals  
17 for the Armed Forces.

18 We then also received by cover letter dated May 30,  
19 2006, from the government, the United States, a document styled  
20 motion to attach documents -- motion to attach documents with  
21 various documents attached, prepared by Mr. Armann himself.

22 Finally, we received the brief on behalf of appellee  
23 in response to appellant's petition for new trial, filed by the  
24 United States in the Court of Appeals for the Armed Forces.

25 Now, in the file that I had, there is an order which

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1 reads as follows: "On consideration of appellant's motion to  
2 attach documents, motion to suspend the rules of the Court,  
3 motion for leave to file out of time, and motion to admit  
4 additional matters pursuant to United\_States\_v.\_Grostefon," I  
5 guess that's how it's pronounced, "it is, by the Court, this  
6 17th day of April, 2002, ordered that said motions are hereby  
7 denied."

8           Here's my first question. Why did the court deny --  
9   did the clerk deny Armann's motion to attach documents, which I  
10 previously referenced, do you know, Ms. Wiegand?

11           MS. WIEGAND: Yes, I do, your Honor. Over the past  
12 couple days, we've been able to put together what we think is  
13 an accurate chronology of what Mr. Armann filed when, and the  
14 court's actions on those filings.

15           THE COURT: Let me interrupt you for one quick  
16 second and then I'll let you go ahead. We wouldn't be having  
17 this conversation if we would have received the entire military  
18 record. And, actually, when you were all before the magistrate  
19 judge and I think quite innocently, nobody recognized it,  
20 but you didn't have the full record there?

21           MS. WIEGAND: That's correct, your Honor. It has  
22 taken some time for us to obtain the complete military record.  
23 The record was in off-site storage, we certainly apologize for  
24 the delay in obtaining that record. It did take some multiple  
25 efforts to obtain that record and get it over to the Clerk's

1   Office and get the additional documentation and piece it

2 together. There wasn't a clear docket sheet or clear easily  
3 accessible military record. But we do believe we have all the  
4 relevant documents from the record.

5 THE COURT: Now, I'm sorry I interrupted you, tell  
6 me about what the clerk was denying there?

7 MS. WIEGAND: Sure. The order that you were  
8 referring to was an order by the Court of Appeals for the Armed  
9 Forces dated April 17, 2002. That order was denying documents  
10 filed by Mr. Armann on March 22, 2002. Mr. Armann had filed  
11 four documents on March 22, 2002, and the court denied those  
12 filings on April 17, 2002. So that the April 17, 2002 order  
13 does not relate to the documents that you had requested from  
14 the government and which the government has sent to you in this  
15 case.

16 THE COURT: What is there of record, I'm not  
17 doubting your word at all because I know you made inquiries,  
18 what is there of record that tells me that?

19 MS. WIEGAND: Captain Ferris can correct me if I'm  
20 wrong here, although the Court of Appeals for the Armed Forces  
21 did not have an official docket relating to this case, they  
22 were able to call from the computer database -- which is

23 similar to a docket which indicates dates particular parties  
24 filed particular documents. Also, the dates the court issued  
25 orders on those documents. So I did obtain that document, and

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1 then together with Captain Ferris, we pieced together the dates  
2 of relevant filings. And then the court orders with respect to  
3 those filings.

4 THE COURT: Forgive me once again, I'm somewhat  
5 unfamiliar, in fact I'm quite unfamiliar with the mechanics of  
6 the military justice system. But why wouldn't there be, as in  
7 any other court proceeding, a docket maintained; isn't there a  
8 docket, just like there would be on the civil side of the  
9 fence, isn't there a court docket?

10 MS. WIEGAND: I'll have to defer to Captain Ferris,  
11 if he knows on that one?

12 CAPT. FERRIS: Sir, there is. There is, but for  
13 instance, if you were to go into the Clerk's Office and asked  
14 to see a case, asked to pull that case file, in my  
15 experience -- and you opened up that case file, there is a  
16 docket sheet right there starting from the beginning. That's

17 not the case if you were to go to the Court of Appeals for the

18 Armed Forces. They keep a full copy of every single filing

19 that comes in there. So when you get a file, all you get is

20 those papers. On their computers they have a database that is

21 used for tracking. When printed out, it looks like just a

22 docket we see everywhere else. So it's really a semantic

23 thing. The sheet looks very much like a docket -- but they use

24 it for their tracking.

25 THE COURT: Let me ask you, Ms. Wiegand, do I have

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1 the motion to attach the four documents that you were

2 referencing, you said that was the motion that the April 17,

3 2002 order denied, is that right?

4 MS. WIEGAND: Partially right, your Honor. On March

5 22, 2002, Mr. Armann and his attorney filed four separate

6 documents. And the April 17, 2002 order related to the four

7 documents that were filed by Mr. Armann and his attorney on

8 March 22, 2002.

9 THE COURT: Do I have that motion?

10 MS. WIEGAND: I do not believe you have that motion.

11 THE COURT: Why don't I have the entire file? I'm  
12 not trying to be argumentative here, the issue in the case and  
13 the issue that was before the magistrate judge was whether or  
14 not under Third Circuit case law and other case law the highest  
15 military court there gave, for instance, the issue of his  
16 competency at time of trial fair and full consideration.  
17 That's essentially the core of the issue -- if not, whether  
18 there should be an evidentiary hearing, etc. Aren't I kind of  
19 walking on one leg here unless I know I have the entire file?

20 MR. PATTON: Your Honor, I may be able to assist you  
21 on this some. When I was appointed, we tried to contact the  
22 JAG defense that represented Mr. Armann in his appeal. They  
23 have since moved, but I got a hold of, I guess it would be the  
24 defense side of the JAG appellant side. I have received a  
25 seven-volume record that appears to be everything from trial

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1 through the CAP. It's big.

2 MS. WIEGAND: Your Honor, if I could add to that.  
3 My understanding is that the file is fairly voluminous and,  
4 also, we did not have a complete copy of the file until the



5 past several days. In fact, I'm not certain that we have every  
6 single document that was ever filed in the military court in  
7 the case. We have tried, and maybe it was not the right thing  
8 to do, we've tried to obtain the relevant documents and attach  
9 the relevant documents to our court pleadings. But because the  
10 military file has a lot of voluminous filings --

11 THE COURT: I understand.

12 MS. WIEGAND: We didn't submit the entire record  
13 from the military court.

14 THE COURT: That's quite all right. To be sure,  
15 probably 98 percent of this voluminous file would be irrelevant  
16 concerning the issue that we have before us. But what I want  
17 to confirm, maybe you can do it by joint stipulation, if you  
18 folks have talked about it or independently know. Now that I  
19 have received these additional three documents, do I now have,  
20 to the best of each of your knowledge, all of the motions or  
21 briefs that would have been submitted in the appellate process  
22 or is there anything else out there that someone knows or  
23 suspects I might be missing insofar as it might inform my  
24 decision on the question of full and fair consideration?

25 MR. PATTON: I believe I have at least a couple --

1 one additional thing you may need, your Honor.

2 THE COURT: What's that?

3 MR. PATTON: The government sent you in their  
4 facsimile two documents. Counsel's brief in support of  
5 petition for new trial and counsel's motion to attach  
6 documents.

7 THE COURT: Right.

8 MR. PATTON: Counsel's motion to attach documents  
9 asks permission to admit Exhibits 1 through 18.

10 THE COURT: Hang on one second, let me grab this  
11 document here.

12 MR. PATTON: This is the one that has the cover  
13 sheet, cover letter of May 30, 2006.

14 THE COURT: Are you talking about the motion to  
15 attach documents?

16 MR. PATTON: Correct. Exhibit 1 is the statement  
17 and verification signed by Kurtis E. Armann. And then the  
18 exhibit is actually attached.

19 THE COURT: Yes.

20 MR. PATTON: That exhibit contains three separate

21 arguments. The government filed a motion opposing --

22 THE COURT: Opposing the attached documents.

23 MR. PATTON: The motion itself, it's captioned

24 objection to appellant's motion to attach documents. There's

25 not a docket number attached to it, it was filed on November

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1 20th of 2001, by Susana E. Watkins, appellate government

2 counsel.

3 THE COURT: In other words, that was a motion

4 opposing the proposed attachment of documents that would have

5 been filed by the petitioner, is that right?

6 MR. PATTON: That is correct.

7 THE COURT: All right. Now, do you know if the

8 appellate court ever ruled on that motion?

9 MS. WIEGAND: Your Honor, this is Christy Wiegand.

10 The appellate court did rule on that motion on January 7, 2002,

11 the Court of Appeals for the Armed Forces granted Mr. Armann's

12 motion to attach documents as to Exhibit 1.

13 THE COURT: What about Exhibits 2 through 18?

14 MS. WIEGAND: The court denied the motion with

15 respect to Exhibits 2 through 18.

16 THE COURT: Okay. So, then, here's my next  
17 question. It sounds to me like there is no dispute but that  
18 the high court had before it the petitioner's motion -- excuse  
19 me, the statement and verification signed by Kurtis E. Armann,  
20 but it didn't have before it the other 17 exhibits, is that  
21 right?

22 MR. PATTON: I believe that's correct, your Honor.

23 MS. WIEGAND: My understanding would be that those  
24 other 17 exhibits would have been submitted to the court and  
25 then the court refused to consider them.

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1 THE COURT: Okay.

2 MR. PATTON: Judge, with regard to the one exhibit  
3 that they let in, Exhibit 1 --

4 THE COURT: Right.

5 MR. PATTON: In this objection that the government  
6 filed, they made a specific argument with respect to that  
7 Exhibit 1, which was Mr. Armann's written verification.

8 THE COURT: What did they say?

9 MR. PATTON: They said only a portion of Exhibit 1  
10 has relevance to this issue, the statement of the case and the  
11 accutane argument under the statement of facts. But it says --  
12 the parts labeled argument two, substance induced psychosis,  
13 and argument three, involuntary intoxication, that the  
14 government argued those issues were not before the court in the  
15 petition for new trial, so the court should not consider that  
16 exhibit, as far as arguments two and three were concerned.

17 MS. WIEGAND: I think the bottom line there is the  
18 CAPs granted that exhibit. That exhibit, the CAPs accepted it,  
19 it was before the court. Regardless of what the government may  
20 have argued with respect to that exhibit. The CAPs did grant  
21 the petitioner's motion with respect to that Exhibit 1.

22 THE COURT: My purpose, really my purpose in the  
23 call here is largely more procedural and housekeeping than it  
24 was substantive. So I kind of want to avoid any argument on  
25 whether it does or does not represent full and fair

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1 consideration. I just wanted to make sure, can we all agree,  
2 then, at least maybe this is a way to bring our discussion to a

3 close, that at least insofar as those documents that would  
4 inform my decision as to the question of full and fair  
5 consideration, I now have all of the relevant documents, save  
6 perhaps the document that Mr. Patton was just reading to me; do  
7 you agree with me, Mr. Patton?

8 MR. PATTON: Yes.

9 THE COURT: Do you agree with that, Ms. Wiegand?

10 MS. WIEGAND: I believe so. If I could ask Captain  
11 Ferris if that's his understanding as well?

12 CAPT. FERRIS: I believe you have everything that  
13 the CAPs considered at this point. Frankly, the reason you  
14 don't have the original motion to attach is because they denied  
15 that motion, it wasn't before them.

16 THE COURT: Mr. Patton, would you send me a copy of  
17 the documents you've been referring to that I don't have?

18 MR. PATTON: Yes, sir.

19 THE COURT: Then what I'm going to do then, is I'm  
20 going to direct my clerk to file these additional documents.  
21 Do you know if any of this military record has been filed in  
22 the District Court yet?

23 MS. WIEGAND: Your Honor, individual documents and

24 briefs and orders have been attached to various pleadings, I

25 believe Mr. Patton has attached documents, I've attached some

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1 documents relating to specific pleadings. But we sort of

2 attached huge sections of the record.

3 THE COURT: I'm going to go ahead and direct my

4 clerk to file the documents that we have discussed here today,

5 and actually Mr. Patton can do it just as well. Go ahead and

6 file the documents you have. And then at least as I now go

7 through this thing, I know I have everything else. All right,

8 I appreciate your time, thank you.

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10 (Whereupon, at 9:35 a.m., the proceedings were

11 concluded.)

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1 CERTIFICATE

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5 I, Ronald J. Bench, certify that the foregoing is a

6 correct transcript from the record of proceedings in the

7 above-entitled matter.

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13 Ronald J. Bench

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